

REMARKS

Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested.

I. Status of the Claims

Claims 1, 4, 6-12 and 24-26 are pending in this application. Claims 2, 3, 5 and 13- 23 have been withdrawn from consideration as being directed to a non-elected species or invention. In the office action mailed on September 2, 2004, claims 1, 4, 7-12 and 24-26 have been objected to under 35 U.S.C. § 103 and claim 6 has been rejected under 35 U.S.C. § 112. Claim 6 is currently amended.

II. Rejection Under 35 U.S.C. § 112

The Examiner has rejected claim 6 under 35 U.S.C. § 112 for failing to comply with the enablement requirement because the claim contains subject matter not described in the specification in such a way to enable one skilled in the art to make and/or use the invention. Claim 6 has been amended to reflect that the thin sheet material “has microscopic pores.” Support for this language can be found in the specification at Page 2, Line 13-15 and Page 4, Lines 10-12.

II. Rejection Under 35 U.S.C. §103

The Examiner has finally rejected claims 1, 4, 7-12, 24-26 under 35 U.S.C. §103(a) as being unpatentable over Ishihara, United States Patent No. 4,974,725, in view of Smart, United

States Patent No. 4,809,455; Bell, United States Patent No. 5,672,342; or Warberg, United States Patent No. 6,337,081.

The Examiner states that Ishihara provides a gas permeable, water-impermeable envelope for transporting liquids and carriers in which a liquid is used to activate a resin powder carrier. The Examiner states that Smart demonstrates the use of liquid animal urine secretion with a powder or granular absorbant carrier although the resultant product is not containerized. The Examiner cites Bell to show urine with estrous secretions although the container does not permit use in conjunction with prolonged release. Finally, the Examiner states that Warberg provides envelope containers with a liquid absorbed onto granular or fibrous carriers to provide a slow release of scent.

Ishihara teaches an envelope made of a gas permeable, water impermeable synthetic resin containing an “organoleptically active substance in powder form” capable of producing a deodorant, scenting or repellent effect and in addition to a water absorbing synthetic resin in powder form (*Ishihara*, Col. 1, Lines 35-42). The pending claims of the instant application require that the odoriferous composition contained within the container comprise a carrier material mixed with a liquid animal product. Ishihara does not teach that the liquid is an animal product but instead teaches that the organoleptically active substance includes deodorants, perfumes and insect repellents (*Id.*, Col. 1, Lines 49-51).

Smart is cited in combination with Ishihara for teaching a bait package comprising a puncturable envelope, which contains a bait formulation (*Smart*, Col. 1, Lines 45-48). The puncturable envelope is sealed to prevent escape of odor before it is put to use and, therefore, it must be punctured with a sharp object at a number of locations to insure the attractant is properly effused (*Id.*, Col. 3, Lines 7-10). The pending claims of the instant application require a container that is pervious to gas but impervious to liquid. The punctured container as provided

in Smart results in deformation or destruction of the container in order to effect the release of the effluent. The punctured container would, therefore, not be able to confine any liquid material. Accordingly, Smart is distinguished from the pending claims because a punctured container as described by Smart does not have the characteristic of being impervious to liquid and pervious to gas.

The Examiner cites Bell in combination with Ishihara for the use of urine as attractants and storage of the same in a bottle. However, Bell neither teaches nor suggests the application or distribution of the animal scent or liquid material. Bell provides that urine is collected after voiding by an animal and the urine may be combined with preservatives before packaging into a bottle sealed with wax (*Bell*, Col. 2, Lines 39-48). Bell does not contain any further disclosure regarding the distribution of the urine animal scent attractant, such as whether the use of the attractant kit requires the bottle in some manner. Bell further does not teach or suggest that the bottle is a required container for the use of the kit. Therefore, there is no teaching or suggestion in Bell as to the application of animal urine as an attractant in such a container, or more importantly, in a container pervious to the passage of gas as required by the instant claims.

With respect to the combination of Bell and Ishihara, the Federal Circuit has long held that “[w]hen a rejection depends on a combination of prior references, there must be some teaching, suggestion, or motivation to combine the references.” *In re Rouffet*, 149 F.3d 1350, 1355. The Federal Circuit has further stated:

‘[V]irtually all inventions are combinations of old elements.’ Therefore an Examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents by solely finding prior art corollaries for the claimed elements would permit an Examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach

would be ‘an illogical and inappropriate process by which to determine patentability.’

In re Rouffet, 149 F.3d at 1357 (citations omitted). The Examiner, therefore has improperly rejected the pending claims by combining Ishihara with Bell under 35 U.S.C. § 103(a). Bell merely teaches collecting urine from an animal and packaging the same into storage bottles. Bell does not teach or suggest the application of an animal product in conjunction with a container of any type. As discussed above, Ishihara discloses a container which comprises a deodorant, scenting or repellant material in conjunction with a permeable membrane. Ishihara, however, does not teach or suggest the collection or use of animal urine or any other animal product as required by the claims. Thus, the Examiner is using the claimed invention as a blueprint to piece together prior art elements of a permeable container and animal products to defeat the patentability of the pending claims.

Warberg teaches a repellent device that includes a container, preferably of a cloth material, that has an opening on one end closed with a drawstring (*Warberg*, Col. 2, Line 2). The device is filled with corn cob chips and a fragrance oil which is carried by the corn cob chips and slowly released through the container (*Id.*, Col. 2, Lines 10-14). Warberg neither teaches nor suggests the utilization of a liquid animal product as the liquid carried by the corn cob chips. Instead Warberg states that the employed fragrance oil repels animals by irritating their respiratory system while simultaneously providing a pleasant scent to humans (*Id.*, Col. 2, Lines 12-15) and further discloses suitable non-animal products that may be utilized within the device (*Id.*, Col. 3, Lines 1-17). The combination of Warberg and Ishihara, with respect to the use of animal products in conjunction with a selectively permeable membrane, is therefore inappropriate.

CONCLUSION

Based on the foregoing remarks, Applicant respectfully submits that claims 1-4, 6-12, and 24-26 are in condition for allowance.

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

METZ LEWIS LLC

By 

Barry I. Friedman, Reg. No. 33,695

Metz Lewis LLC

11 Stanwix Street, 18th Floor

Pittsburgh, Pennsylvania 15222

(412) 918-1100

Attorneys for Applicant